

OGC HAS REVIEWED.

28 June 1948

STATINTL

Contract Section
Thru: Chief, Services Branch
General Counsel

Contract [redacted]

STATINTL

1. Returned herewith is Contract [redacted] and the attached file.
2. We wish to comment on the time factor stated in the invitation. It is stated that "Time of delivery will be a determining factor in making award." It then states a schedule which is phrased in such a way as to indicate partial deliveries must be made within 45 days from notice of award, but complete delivery must be made within 30 days from the notice of award.
3. A statement in the invitation making time a determining factor could make the choice of the award very difficult. If one bidder were high in price but low in time, we would be subject to criticism for awarding to him unless it could be convincingly demonstrated that the time was more important than saving money. This might often be a difficult determination to make. However, if in the case stated award was made to the low bidder, the high bidder might argue that his offer on time being low, and time being a determining factor, he was entitled to the award. We suggest wording somewhat as follows: "Time of delivery is of importance and will be considered in making the award." Only in very rare instances will time be of sufficient importance that a difference in delivery times of possibly a few days will be enough to determine the award. In such cases the record would speak for itself in justifying an award on time rather than on straight cost.
4. In the remainder of the condition as to time in the attached invitation, we suggest, in the interest of clarity, changing the second sentence to read: "Partial delivery must be made within 45 days from the date notice of award is placed in the mail and the balance of the order complete within 30 days after such period."

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5. In the present case (Contract [redacted]) we note that [redacted] [redacted] is low bidder and gives an apparently satisfactory delivery offer, and accordingly the contract is approved as to legal form subject to the comments set forth above.

LAWRENCE R. HOUSTON

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Att: File on [redacted]
LRR:blc